

Exhibit D

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

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4 In Re:)
5 PHARMACEUTICAL INDUSTRY) CA No. 01-12257-PBS
6 AVERAGE WHOLESALE PRICE) MDL No. 1456
7 LITIGATION) Pages 1 - 35

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SETTLEMENT STATUS CONFERENCE

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10 BEFORE THE HONORABLE PATTI B. SARI S
11 UNITED STATES DISTRICT JUDGE

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14 United States District Court
15 1 Courthouse Way, Courtroom 19
16 Boston, Massachusetts
17 May 22, 2007, 11:10 a.m.

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23 LEE A. MARZILLI
24 OFFICIAL COURT REPORTER
25 United States District Court
1 Courthouse Way, Room 3205
Boston, MA 02210
(617) 345-6787

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16 ALSO PRESENT: Michael DeMarco, Esq.
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4 THE COURT: July 23. And I actually -- and so if
5 you were a betting person -- have you even started that
6 process?

7 MR. BERMAN: I believe Professor Green has made a
8 couple phone calls to both sides.

9 THE COURT: But you have no way of gauging whether
10 or not that's real or not?

11 MR. BERMAN: Right now my gauge is on the empty
12 side.

13 THE COURT: Well, that's because you haven't
14 actually started doing anything. If you were a betting
15 person, do you think there's a greater -- the only reason I
16 say this, I have criminal cases, I have other civil cases.
17 You are my number one priority. I'm going to get through
18 this this summer.

19 MR. BERMAN: I don't think the case will settle
20 without your ruling.

21 THE COURT: So --

22 MR. BERMAN: I don't want to put pressure on you.
23 I just see that there --

24 THE COURT: I feel it, I feel it.

25 (Laughter.)

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1 MR. BERMAN: They're convinced they didn't publish
2 AWPs, so they won't talk to us. I mean, that's the
3 back-and-forth.

4 THE COURT: And I see a friend back there from
5 Track Two.

6 MR. DeMARCO: Good morning, your Honor.

7 THE COURT: I notice you come to all of these
8 things because whatever is happening, we're essentially
9 wrapping up Track One, so you are next. What do I owe you?
10 I owe you class certification. And have you filed motions
11 for summary judgment?

12 MR. DeMARCO: Yes.

13 THE COURT: I have so many boxes from so many
14 cases.

15 MR. DeMARCO: Wait a minute. I'm sorry, I stand
16 corrected. We have not as yet.

17 THE COURT: All right, good. Honestly, if you saw
18 my office, I've actually begged and just received another
19 room from building management to just keep the files and the
20 binders and everything.

21 So let me say this: I will issue an opinion on the
22 big case by the end of the summer, maybe before then, because
23 I'm, as you probably know, I'm not off the draw, so I'm doing
24 the rest of my case load too. So the big issue is, if I do
25 that, I may need that reargued, the class cert, in light of

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whatever I've done.

1 And I also think, I hate to say this, but I also
2 think summary judgment -- I loved, they probably didn't, but
3 I loved the bench trial because I actually learned hugely
4 about each drug and each circumstance in a way sometimes that
5 the millions of crates don't do for me. Basically it forces
6 you all to parse through and present it in a clean way. So I
7 don't know that I would do summary judgment, and I hate to
8 have you spend -- I didn't in Track One. Isn't that
9 essentially -- we just bypassed it.

10 MR. BERMAN: You bypassed it. We argued it and
11 briefed it.

12 THE COURT: I bypassed.

13 (Laughter.)

14 THE COURT: You all need trial experience, and I
15 let some associates have experiences, and it was --

16 MR. THEODOROU: What happened next?

18 THE COURT: It was incredibly important to me in
 19 understanding this case. Now, maybe I wouldn't need the full
 20 whammy again just simply because I've been through it once,
 21 but I think there are different issues, and you all have the
 22 right to present it your own way and that sort of thing.

23 MR. DeMARCO: I'm here. I have to talk to the
 24 troops, of course, about all this because I'm just one guy
 25 standing here, and there are a number of people that all

0031 have --

1 THE COURT: Absolutely, but before you start -- do
 2 we have a date for the summary judgment, or is everyone
 3 waiting for class cert?

4 MR. BERMAN: I think it was timed to your class
 5 cert.

6 MR. DeMARCO: It was timed to class cert.

7 THE COURT: So what we'll do is, when I issue the
 8 big opinion, I'm going to call you all back in here and say,
 9 "Okay, we're jump starting Track Two."

10 MR. DeMARCO: Well, you've got the remainder of
 11 Track One to deal with with Johnson & Johnson and BMS.

12 THE COURT: Right. What I'm saying is, we're
 13 moving. It's going to be done.

14 MR. DeMARCO: I've lived here my whole life. I'm
 15 not going anywhere.

16 THE COURT: I know. Just I think that it's time to
 17 sort of rally the troops because it's no longer the distant
 18 future.

19 MR. BERMAN: Right, we filed a motion in this
 20 regard last week.

21 THE COURT: Which is what?

22 MR. BERMAN: Asking for a trial of the Class 2, 3,
 23 rest of the case against AstraZeneca for October.

24 MR. DeMARCO: He means Aventis.

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1 MR. BERMAN: No, AstraZeneca.

2 THE COURT: Say that again?

3 MR. BERMAN: Well, we still have the issue of,
 4 after you get done with Massachusetts, what to do with the
 5 rest of the country, and we're going to ask for it to be
 6 certified and to have a trial.

7 THE COURT: I'm going to hit Track 2 first.

8 MR. BERMAN: Okay.

9 THE COURT: I need to give them a little break
 10 here.

11 MR. BERMAN: I want to at least get rid of one
 12 alphabet.

13 THE COURT: I need to do something with Class 2,
 14 and I need to do something with all the state attorney
 15 general actions. I need to give guidance to them. I need to
 16 move on drug cases and just either get a momentum to
 17 settlement or to trial. I've been luckily -- I'm pleased,
 18 the First Circuit gave me money for a third law clerk again,
 19 so I can actually staff this in the way it needs to be. And
 20 so I'm really eager to at least have next year be Track Two
 21 year. They're probably sick of being in Boston, so -- you
 22 don't have any Track Two, do you, Mr. Theodorou?

23 MR. THEODOROU: I'm only One, and whatever then
 24 raises this other issue, which I'm glad to say we're not
 25 there for two more years, this October trial.

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1 THE COURT: All right. And don't forget, you all
 2 don't know this and aren't a part of it, but I've got all now
 3 the Justice Department's False Claims Act cases. So that's
 4 really going to be a big piece of my puzzle too. So I'm just
 5 trying to get it so there's enough of a knowledge on each